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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 225**

**RIN 0750-AI11**

**Defense Federal Acquisition Regulation Supplement: Domestically Nonavailable Articles—Elimination of DoD-Unique List (DFARS Case 2013-D020)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the DoD-unique list of nonavailable articles because these items have been found to be either available domestically or are not used by DoD.

**DATES:** Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013-D020, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS

Case 2013-D020" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2013-D020." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2013-D020" on your attached document.

- o E-mail: dfars@mail.mil. Include DFARS Case 2013-D020 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Lee Renna, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Lee Renna, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6095; facsimile 571-372-6101.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to remove section 225.104 in its entirety, because the articles currently listed no longer qualify as an exception to the Buy American statute (41 U.S.C section 8302(a)), on the basis of their nonavailability.

## **II. Discussion and Analysis.**

DoD has determined that domestic aluminum-clad steel wire available in the United States meets the two-part test used at FAR 25.101(a) to define a domestic end product, i.e., this item is known to be manufactured in the United States and the cost of the domestic components in this item exceed 50 percent of the sum total cost of the components of the product. In addition, the domestic sources that supply this item are capable of meeting 50 percent or more of the total U.S. Government and nongovernment demand, as required by FAR 25.103(1).

Sperm oil is not used by DoD. Sperm oil is obtained from sperm whales, which are listed in 50 CFR section 17.11 as an endangered species; therefore, in accordance with the Endangered Species Act of 1973 (16 U.S.C. sections 1531-1544), it is unlawful to engage in any activity that could bring harm to these animals. It is possible to obtain "pre-Act" sperm oil, i.e., sperm oil, including derivatives thereof, which was lawfully held within the United States on or before December 28, 1973; however, as previously stated, DoD does not use this product in any application.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule is removing the DoD-unique list of nonavailable articles that have been found to be either available domestically or are not used by DoD. Of the two items on the list, aluminum-clad steel is produced and available in the United States, and DoD does not use sperm oil. However, an

initial regulatory flexibility analysis has been performed and is summarized as follows:

(1) The removal of the nonavailability exception to the Buy American statute for aluminum-clad steel wire will neither increase nor decrease small businesses' participation in future procurements, particularly with regard to set-asides under the Small Business Program. This conclusion is primarily attributed to the application of the nonmanufacturer rule. Under the nonmanufacturer rule, any small business concern proposing to furnish a product that it did not itself manufacture must furnish the product of a domestic small business manufacturer. However, in industries where the Small Business Administration (SBA) has determined there are no domestic small business manufacturers, SBA may issue a waiver to the nonmanufacturer rule to permit small businesses to provide any firm's product (see FAR 19.102(f)(7)). Reinstatement of the Buy American statute restrictions has no effect on the application of the nonmanufacturer rule.

(2) With respect to the procurement of sperm oil, DoD does not use this product in any application. As such, a discussion of future procurement opportunities for this substance is no longer relevant.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other

Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013-D020), in correspondence.

## **V. Paperwork Reduction Act**

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### **List of Subjects in 48 CFR Part 225**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 225 is proposed to be amended as follows:

### **PART 225-FOREIGN ACQUISITION**

1. The authority citation for 48 CFR part 225 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**225.104 [Removed]**

2. Remove section 225.104.

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